

[COMMITTEE PRINT]

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**[Showing H.R. , As Adopted by the Subcommittee on Capital
Markets, Securities, and Government Sposored Enterprises]**

106TH CONGRESS
1ST SESSION

H. R. 2924

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 23, 1999

Mr. BAKER (for himself, Mr. KANJORSKI, Mr. LEACH, Mr. LAFALCE, Mr. MCCOLLUM, Mr. CASTLE, Mr. RILEY, Mr. JONES of North Carolina, Mr. HINCHEY, and Mr. CAPUANO) introduced the following bill; which was referred to the Committee on Banking and Financial Services, and in addition to the Committees on Commerce, and Agriculture, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

[Strike out all after the enacting clause and insert in lieu thereof the part printed in roman]

[For text of introduced bill, see copy of bill as introduced on September 23, 1999]

A BILL

To require unregulated hedge funds to submit regular reports to the Board of Governors of the Federal Reserve System, to make such reports available to the public to the extent required by regulations prescribed by the Board, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Hedge Fund Disclo-
5 sure Act”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds as follows:

8 (1) Hedge funds currently operate largely out-
9 side the framework of substantive United States
10 banking, securities, and futures laws and regula-
11 tions.

12 (2) The recent crisis of a large hedge fund dem-
13 onstrated several ways in which the condition of
14 major financial institutions in the United States, in-
15 cluding many banks with federally insured deposits,
16 reflects the success or failure of various hedge funds.

17 (3) Among other things, financial institutions
18 often invest in hedge funds, lend to hedge funds, act
19 as counterparties in securities and derivatives trans-
20 actions with hedge funds, and conduct proprietary
21 trading activities that mirror the investment strate-
22 gies of leading hedge funds.

23 (4) In several cases, hedge funds utilize finan-
24 cial leveraging practices to a greater degree than do
25 many regulated financial institutions and this high

1 degree of leverage exacerbates the extent to which
2 such hedge funds potentially pose a threat to the
3 safety and soundness of the United States and inter-
4 national financial systems.

5 (5) Given that most of the institutions and
6 wealthy individuals that invest in hedge funds are
7 highly sophisticated, market forces, rather than gov-
8 ernment regulations, are the best tools for con-
9 straining hedge funds from engaging in excessive le-
10 verage.

11 (6) Market forces are similarly the most effec-
12 tive means of disciplining financial institutions that
13 have allowed hedge fund dealings to threaten their
14 stability.

15 (7) The United States Government must insure
16 that the failure of 1 or more hedge funds never
17 causes a severe burden on the United States finan-
18 cial system or the United States payments system
19 and that Federal resources are not squandered in ef-
20 forts to salvage collapsed hedge funds.

21 (8) Market forces cannot properly function with
22 respect to hedge fund risks without a minimum of
23 reliable information about hedge funds activities.

1 **SEC. 3. DEFINITIONS.**

2 (1) BOARD.—The term “Board” means the
3 Board of Governors of the Federal Reserve System.

4 (2) CONTROL.—The term “control” means the
5 possession, direct or indirect, of the power to direct
6 or cause the direction of the management and poli-
7 cies of a person, whether through the ownership of
8 voting securities, by contract, or otherwise.

9 (3) FEDERAL BANKING AGENCIES.—The term
10 “Federal banking agency” has the meaning given to
11 such term in section 3(z) of the Federal Deposit In-
12 surance Act.

13 (4) UNREGULATED HEDGE FUND.—

14 (A) IN GENERAL.—The term “unregulated
15 hedge fund” means any pooled investment vehi-
16 cle, or any group or family of pooled investment
17 vehicles under the control of the same person,
18 that had, as of the last business day of any of
19 the 4 most recent calendar quarters, either—

20 (i) aggregate total assets of
21 \$3,000,000,000 or more; or

22 (ii) aggregate net asset value of
23 \$1,000,000,000 or more.

24 (B) EXCLUSION OF CERTAIN POOLED IN-
25 VESTMENT VEHICLES.—The term “unregulated

1 hedge fund” does not include any pooled invest-
2 ment vehicle that is—

3 (i) registered with the Securities and
4 Exchange Commission;

5 (ii) operated by a person registered
6 with the Commodity Futures Trading
7 Commission as a commodity pool operator
8 and that publicly discloses information
9 comparable to the information required to
10 be disclosed under this Act; or

11 (iii) subject to examination by, or the
12 reporting requirements of, a Federal bank-
13 ing agency.

14 (C) FURTHER BOARD DEFINITION.—

15 (i) IN GENERAL.—The Board may ex-
16 empt by regulation, conditionally or uncon-
17 ditionally, any person or class of persons
18 from the definition of the term “unregu-
19 lated hedge fund” or the requirements of
20 section 4(a), as the Board determines to be
21 consistent with the public interest or the
22 purposes of this Act.

23 (ii) CONSIDERATION OF AVAILABILITY
24 OF INFORMATION.—In exercising any au-
25 thority under this subparagraph, the

1 Board shall consider the extent to which
2 information about a person or class of per-
3 sons is already publicly available.

4 **SEC. 4. PUBLIC REPORTS REQUIRED.**

5 (a) IN GENERAL.—Before the end of the 15-day pe-
6 riod beginning at the end of each calendar quarter, each
7 unregulated hedge fund shall submit a report to the Board
8 which shall include the following information:

9 (1) Meaningful and comprehensive financial in-
10 formation (such as a complete set of financial state-
11 ments prepared in accordance with generally accept-
12 ed accounting principles consistently applied and
13 measures of off-balance sheet exposure) for or as of
14 the end of the calendar quarter.

15 (2) Meaningful and comprehensive measures of
16 risk (such as value-at-risk or stress test results) as
17 of the end of the calendar quarter.

18 (3) Such other information as the Board, in
19 consultation with the Secretary of the Treasury, the
20 Chairman of the Securities and Exchange Commis-
21 sion, the Chairperson of the Commodity Futures
22 Trading Commission, and the Federal banking agen-
23 cies, may require by regulation, except that no such
24 regulation may require an unregulated hedge fund to
25 reveal proprietary information.

1 (b) AVAILABILITY OF REPORTS.—Upon receipt of re-
2 ports under subsection (a), the Board shall—

3 (1) immediately transmit copies of the reports
4 to the Secretary of the Treasury, the Chairman of
5 the Securities and Exchange Commission, the Chair-
6 person of the Commodity Futures Trading Commis-
7 sion, and the Federal banking agencies; and

8 (2) make the reports available to the public on
9 a timely basis.

10 (c) REGULATIONS.—

11 (1) IN GENERAL.—The Board may, in consulta-
12 tion with the Secretary of the Treasury, the Chair-
13 man of the Securities and Exchange Commission,
14 the Chairman of the Commodity Futures Trading
15 Commission, and the Federal banking agencies, pre-
16 scribe regulations, as may be appropriate in the pub-
17 lic interest or to further the purposes of this Act,
18 that prescribe the form of the reports required by
19 subsection (a) and define or interpret the terms used
20 in this Act.

21 (2) REGULATION TIME-FRAME.—The Board
22 shall—

23 (A) publish proposed regulations under
24 this section in the Federal Register before the
25 end of the 90-day period beginning on the date

1 of the enactment of this Act, to allow for public
2 comment; and

3 (B) prescribe such regulations in final
4 form before the end of the 90-day period begin-
5 ning on the date the proposed regulations are
6 so published, unless the Board determines that
7 additional time, not to exceed 60 days, for com-
8 ment on the proposed regulations is necessary.

9 (d) ORDERS.—The Board may issue an order to any
10 unregulated hedge fund to comply with the requirements
11 of this section and the regulations prescribed under this
12 section.

13 **SEC. 5. JUDICIAL ENFORCEMENT OF ORDERS.**

14 (a) IN GENERAL.—The Board may, in the sole dis-
15 cretion of the Board, apply to—

16 (1) the United States district court within the
17 jurisdiction of which the principal office of the un-
18 regulated hedge fund is located; or

19 (2) in the case of an unregulated hedge fund
20 which is a person of a foreign country (as defined
21 in section 3502(d) of the Omnibus Trade and Com-
22 petitiveness Act of 1988) and borrows from, accepts
23 investments by, or is a counterparty to any person
24 who resides within or is organized under the laws of

1 the United States or any State, the United States
2 District Court for the District of Columbia,
3 for the enforcement of any effective and outstanding order
4 issued under section 4, and such court shall have jurisdic-
5 tion and power to order and require compliance therewith.

6 (b) NO JUDICIAL REVIEW.—Except as provided in
7 subsection (a), no court shall have jurisdiction to affect
8 by injunction or otherwise the issuance or enforcement of
9 any order under section 4 or to review, modify, suspend,
10 terminate, or set aside any such order.

11 **SEC. 6. PUBLIC DISCLOSURE OF DIRECT MATERIAL EXPO-**
12 **SURES TO SIGNIFICANTLY LEVERAGED FI-**
13 **NANCIAL INSTITUTIONS.**

14 (a) SENSE OF THE CONGRESS.—It is the sense of the
15 Congress that each public company, including financial in-
16 stitutions, should regularly and publicly disclose a sum-
17 mary of direct material exposures of the company, whether
18 in the form of equity, loans, or other credit exposure, to
19 significantly leveraged financial institutions, including
20 commercial banks, investment banks, finance companies,
21 and unregulated hedge funds.

22 (b) REGULATIONS AUTHORIZED.—The Securities
23 and Exchange Commission shall prescribe regulations to
24 require the disclosures described in subsection (a).

1 **SEC. 7. ENHANCED COUNTERPARTY RISK MANAGEMENT BY**
2 **DEPOSITORY INSTITUTIONS.**

3 Section 39(a)(1) of the Federal Deposit Insurance
4 Act (12 U.S.C. 1831s(a)(1)) is amended—

5 (1) by redesignating subparagraphs (E) and
6 (F) as subparagraphs (F) and (G); and

7 (2) by inserting after subparagraph (D) the fol-
8 lowing new subparagraph:

9 “(E) counterparty risk management;”.